

**871—26.13 (17A,96) Subpoenas and witnesses.**

**26.13(1)** It is the responsibility of the parties to request the attendance of such witnesses they believe have knowledge of the facts in issue in the contested case.

**26.13(2)** Upon the written request of a party in interest received at least three days prior to the date of a hearing, the presiding officer shall issue a subpoena compelling the attendance of a person at the contested case hearing.

**26.13(3)** The written request shall include:

- a.* The name and address of the person to be served;
- b.* A statement of the relevance of the witness's testimony and that it will not repeat or duplicate the testimony of other witnesses; and
- c.* A statement that the witness refuses to testify voluntarily despite the party's request that the person do so.

**26.13(4)** A subpoena duces tecum shall be issued in the manner provided in subrule 26.13(2), except that the request must also state specifically the books, papers, correspondence, memoranda or other records desired.

**26.13(5)** Documents subpoenaed for telephone hearings shall be mailed or faxed to the appeals section prior to the hearing to facilitate the exchange of documents among the parties. Documents subpoenaed for in-person hearings shall be brought to the hearing site at the time of the contested case hearing, unless otherwise ordered by the presiding officer.

**26.13(6)** If the presiding officer deems it appropriate, the person to whom a subpoena is directed shall be notified and given the opportunity to object to the issuance of the subpoena.

*a.* If an objection to the issuance of the subpoena is raised, the presiding officer may, as a matter of discretion, hear and rule on the objection prior to commencing the evidentiary hearing or postpone the evidentiary hearing and schedule a special hearing to receive arguments from all parties concerning the issuance of the subpoena.

*b.* The presiding officer shall issue the subpoena if it is established to the presiding officer's satisfaction that the testimony or document sought is material and relevant, is not unduly repetitious of other evidence already of record or expected to be submitted by any party, and, in the case of the subpoena duces tecum, the records requested do not disclose business secrets or cause undue burden on the party to whom the subpoena is directed.

**26.13(7)** If the subpoena is granted over objection, the aggrieved party may, in accordance with Iowa Code section 17A.19(1), petition the district court for review of the action before proceeding further. The aggrieved party must in that event promptly notify the presiding officer that a petition for judicial review of such order will be filed immediately so that the contested case may be postponed until the court has issued its ruling. Nothing herein shall preclude an aggrieved party from including the granting or denial of a subpoena as grounds for appeal of the presiding officer's decision in the contested case to the employment appeal board of the department of inspections and appeals.

**26.13(8)** Any subpoenaed witness attending a hearing shall be paid \$10 for each day's attendance, and \$5 for each attendance of less than a full day, plus mileage expenses at the rate specified in Iowa Code section 79.9 for each mile actually traveled.

**26.13(9)** If any person to whom a subpoena is directed refuses to honor the subpoena, the appeals section of the department may apply to the appropriate district court for an order to compel the party to obey the subpoena.

**26.13(10)** A party may request the issuance of a subpoena or a subpoena duces tecum to be served in another state. If the presiding officer finds the witness or evidence sought is material, relevant and not available in this state, the presiding officer shall explore the possibility of obtaining it voluntarily. When necessary and upon proper application, the presiding officer shall have a subpoena or a subpoena duces tecum issued to be served by a sister agency in the state in which the witness or evidence is located, compelling the witness to testify or the evidence to be produced.